

REMARKS/ARGUMENTS

In the Restriction Requirement dated October 9, 2008, the Examiner delineated the following inventions as being patentably distinct:

Group I: consisting of Claims 1-3, drawn to a method to screen for malt; and

Group II: consisting of Claim 4, drawn to a method to produce a malt-based sparkling beverage.

Applicants provisionally elect with traverse the invention of Group I, Claims 1-3, drawn to a method to screen for malt.

The inventions of Groups I and II are integrally linked as method of making and method of use, hence the dependency of Group II on Group I.

A dependent claim is one which contains the features of another claim and is in the same category of claims as other claims.

It does not matter if a dependent claim itself contains a further invention. All of the claims should be grouped together since they form a single general inventive concept.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction (M.P.E.P. § 803). Moreover, when making a lack of unity of an invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (i.e. why there is no single inventive concept specifically describing the unique technical feature in each group) (M.P.E.P. § 1893.02(d)). It is a technical relationship that involves the same feature, and it is this technical relationship that defines the contribution which each of the groups, taken as a whole, makes over the prior art.

The Examiner asserts that Groups I and II do not relate to a single general inventive concept under PCT Rules 13.1 and 13.2 because they lack the same corresponding technical feature.

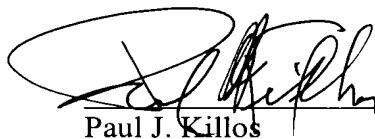
The Examiner, however, has not considered that the claims in each group are considered related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while PCT Rules 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides in relevant part that a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to a product, process and use of said product.

Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction should now be required when the International Report did not, restriction is now believed to be improper.

For the reasons set forth above, Applicants request that the restriction requirement be withdrawn.

Respectfully submitted,

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